



WP.No. 1384 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.03.2023**

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No. 1384 of 2016

and

W.M.P.No. 33764 of 2016

The Salem Kutturavu Sakkarai Aalai
Polytechnic College Paniyalargal
Padukappu Sangam
(Regn.No. 112/NMK/16/07/2002)
Represented by its Secretary
A. Gnanaprakasam

...Petitioner

Versus

1. The Director of Sugars
E.V.R. Periyar Maligai
690, Anna Salai, Nandanam, Chennai - 35.
2. The Managing Director
The Salem Co-operative Sugar Mills Ltd.,
Mohanur, Namakkal District.
3. The President & Board of Directors
The Salem Co-operative Sugar Mills Ltd.,
Mohanur, Namakkal District.
[R3 impleaded as per order dated
16.11.2017 in WMP.NO. 26196 of 2017]



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Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings in No. 14701/SL3/15 dated 17.12.2015 and to quash the same as illegal and consequently to direct the first respondent to implement the recommendations of IV, V and VI pay commission with retrospective effect insofar as the petitioner Sangam is concerned.

For Petitioner : Mr.S. Siva Shanmugam
For Respondent-1 : Mr.M. Shajahan
Special Government Pleader
For Respondent-2 : Mr.R. Balaramesh

ORDER

This writ petition has been filed challenging the order of the first respondent, vide proceedings No.14701/SL3/15, dated 17.12.2015 and quash the same as illegal and consequentially direct the first respondent to implement the recommendations of IV, V and VI Pay Commission with retrospective effect, insofar as the petitioner/Sangam is concerned.



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2. It is the case of the petitioner/Association that their Association is a registered Association bearing Registration No.112/NMK/16.07.2001 with the Registrar of Trade Unions, represented by its Secretary A. Gnanaprakasam. The petitioner/Sangam espouses the service grievances of its members, who are teaching and non-teaching staff of Salem Co-Operative Sugar Mills Polytechnic College under the administrative control of the respondents. They were appointed by the second respondent in the time scale of pay on par with the State Government Employees. Following the Government Norms, they were placed on probation and confirmed in the post. The pay scales were revised periodically following the pay revisions announced by the Government. But the respondents have not implemented IV, V and VI Pay Commission benefits with retrospective effect. On the other hand, the V pay commission was implemented prospectively and 20% of the DA is yet to be paid. While so, the VI Pay Commission recommendations are yet to be implemented. However, the petitioner/Association made a representation to the respondents for revision of pay scale as per the recommendations of IV, V and VI Pay Commissions with retrospective effect. Since no reply was received from the respondents, the petitioner/Sangam has filed Writ Petition in



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W.P.No.32503 of 2015 and by order dated 13.10.2015, this Courts directs the respondents to dispose of the representation of the petitioner/Sangam. The 2nd respondent, by his proceedings No.14701/SL3/15, dated 17.12.2015, has disposed of the representation, based on the judgment of Full Bench of this Court in W.A.No.1307/2009, dated 15.10.2015. The said judgment is not at all applicable to the petitioner/Sangam, whereas, the institution under the control of the first respondent is fully financed by the Government. A perusal of the proceedings of 1st respondent in Rc.No.11071/S&M/2011, dated 01.07.2011 will stand testimony of the financial control of the Government over the Polytechnic. The retirement benefits of Mr.Appavoo, who has retired from the Salem Co-operative Sugar Mills Polytechnic College, calculated on the basis of V pay commission by itself, will prove that payment of pension and settlement of retirement benefits are being done as that of the Government Servants. A perusal of letter dated 10.12.2013 in favour of Mr.Appavoo, an employee, will show that the Polytechnic is owned and controlled by the Government. Moreover, all the Governing Council members of the Polytechnic College, are Government Officials. The cadre strength of the Polytechnic is as prescribed by the Directorate of



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Technical Education (DOTE) norms. The approval/recognition of Polytechnic shall be issued by All India Council for Technical Education (AICTE). Clauses 2.3 of the AICTE notification on revised pay scales and service conditions mandates the Government and Private unaided Institutions to submit the scheme to be implemented to the AICTE. Clauses 2.4 specify that the pay scale, qualifications and other associated terms as given in this Notification, shall be applicable to all self-financing institutions. The Polytechnic run by R2 has also to apply for extension of approval from AICTE. A perusal of one such application dated 04.03.2015 in the form of deficiency report, shows that payment of salary is made as per VI Pay Commission recommendations. But in reality, the payment as recommended in VI Pay Commissions have not been paid to the petitioner which is the grievance raised by the petitioner in this writ petition. The nature of establishment and its existence as detailed above, will show that the teaching and non-teaching staff are entitled to Pay Commissions recommendations and it is very well evidenced in the declaration submitted by the second respondent before AICTE. Therefore, it is crystal clear that the petitioner is very much entitled to demand implementation of IV, V and VI pay commission recommendations. The



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judgment of the Full Bench of this Court is not all applicable to the petitioner and the Salem Co-operative Sugar Mills Polytechnic College cannot be portrayed as a private Institution, on the other hand, it is borne out by records that the members of the petitioner/Sangam are entitled to Government pay scales as the very appointment order itself stands proof of the same. The first respondent has implemented the Pay Commission recommendations in respect of Dharmapuri Co-operative Sugar Mills Polytechnic College, which is a private Institution, but has not implemented for the members of the petitioner/Sangam with an ulterior motive to deprive the legitimate entitlement to the petitioner. Aggrieved by the inaction of the respondents, the petitioner/Sangam have come forward with the present writ petition under Article 226 of the Constitution of India.

3. Heard both sides and perused the materials available on record.

4. The Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District, Self Financing Polytechnic College was converted into Government Polytechnic College. The relevant portion of



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G.O.(Ms).No.28, Higher Education (B2) Department, dated 31.01.2018

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reads as follows:-

"In the Government order first read above, Government accorded permission for starting of the Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District managed by Salem Co-operative Sugar Mills Ltd., with 3 Diploma courses in (i) Mechanical Engineering, (ii) Civil Engineering and (iii) Electronics and Communication Engineering during the academic year 1984-1985 as Self-Financing Polytechnic College.

2. Since the Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District run by Self supporting basis based on the revenue generated by the fee paid by the Students and there is a steady decrease in the student strength from the year 2009-10 onwards, the Chairman of the Salem Cooperative Sugar Mills Polytechnic College, Mohanur, Namakkal District, has reported that the above said Polytechnic College, is not able to run by the Salem Cooperative Sugar Mills Ltd., due to its financial constraints and has therefore requested to convert the Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District into Government Polytechnic College. In the General Body Meeting of the Salem Co-operative Sugar Mills Polytechnic College, held on 30.08.2014, resolution was passed for conversion of the above said Polytechnic College into Government Polytechnic College. The Director of Sugar has recommended to convert the above said Polytechnic College into Government Polytechnic College.

3. Considering the plight of the staff working and the interest of the students studying therein of the above said Polytechnic College located in a backward area, the



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Commissioner of Technical Education has sent a detailed proposal for conversion of the Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District into Government Polytechnic College in terms of prevailing AICTE guidelines by stating that the above Polytechnic College has obtained AICTE Extension of Approval for the year 2017-18 to offer 5 Diploma courses in Engineering and Technology with the total sanctioned intake of 360 students per year.

4. The Government after careful examination of the proposal of Commissioner of Technical Education in his letters fourth and sixth read above sent in accordance with the direction of Hon'ble High Court of Madras, dated 06.10.2016 in WP No.22863 of 2016 second read above and have decided to accord administrative and financial sanction and order accordingly, subjecto the conditions specified in para-5 below.

(a) for conversion of Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District into Government Polytechnic College.

(b) for starting of five courses, viz., Civil Engineering, Mechanical Engineering, Electrical and Electronics Engineering, Electronics and Communication Engineering and Computer Engineering with sanctioned intake of 60 for each course with the medium of instruction as English, subject to condition that admission should be made as per Tamil Nadu Reservation Act 45 of 1994 [Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointment or posts in the Services under the State) Act, 1993]

(c) for sanction of 88 posts t45 Teaching, 24 Technical Posts, 14 Administrative Staff and 5 Basic Servant postsl as detailed in the Annexure-I to this order, subjec to filling up of the basic servant posts (Watchman, Gardener and Sanitary Workers), except Office Assistant



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by outsourcing.

(d) for sanction of a sum of Rs.650.00 Lakhs (Rupees Six crore and Fifty lakh only) towards Recurring Expenditure in connection with Staff Salary for I. II and III'd Year.

5. The above administrative and financial sanction accorded in Para-4 are subjecto the following conditions:-

(i) An extent of 8.00 acres of land covering all the existing buildings and approach road for the Polytechnic College as described in the Annexure-II to this order, equipments and furniture shall be handed over to Government as provided in the Government order first read above and as resolved in the meeting of Board of Directors of Salem Co-operative Sugar Mills Ltd., held on 15.03.2017.

(ii) Regular and qualified staff of the above said Polytechnic College alone shall be allowed to continue.

(iii) Merger Committee shall be constituted for absorption and accommodation of regular and qualified staff of the Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District in the above created post and the Committee shall decide Terms and conditions of their absorption. Staff shall be absorbed only against sanctioned post and excess staff will not be taken over. Till such time the final terms and conditions are decided, the staff will be paid only the existing scale of pay as they are presently drawing.

(iv) (sic)

(v) An undertaking incorporating the following conditions also has to be obtained from the existing regular and qualified staff for their absorption:-

(a) No pensionary benefits will be claimed

(b) Past services will not be counted and Seniority will not be claimed.

(c) (sic)

(d) Contributory Pension Scheme only will be applicable.



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(e) No arrears of Pay shall be given.

6. The Government further direct the Commissioner of Technical Education:-

(a) to obtain the approval of AICTE for bifurcation of 8.00 acres of land out of 19.51 acres of existing land available while applying to AICTE for change of ownership of educational institution, after the taking over of the Institution and reduction in intake in Mechanical Engineering from 120 to 60.

(b) to instruct the management of the institution to close schemes like Group Gratuity Cash Accumulation Policy (GGCA), EPF, SLS and settle their accounts and clear all their pending dues pertaining to EPF, SLS and GGCA, before the regular staff are inducted into Government service.

(c) to constitute a Merger Committee for absorption and accommodation of regular and qualified staff of the Salem Co-operative Sugar Mills Polytechnic College, Mohanur, Namakkal District in the created post mentioned in para 4 (c)."

3. In view of the above said G.O.(Ms)No.28, High Education (B2) Department, dated 31.01.2018, the writ petition is disposed of with a direction to the respondents to implement the said G.O. in its letter and spirit. No costs. Consequently, connected Miscellaneous Petition is closed.

17.03.2023

msm



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Index by : Yes/No

Internet by : Yes/No

To

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V.BHAVANI SUBBAROYAN, J.

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